



MEMORANDUM

DATE: March 1, 2023

TO: Mayor Larry G. Hushour and Council Members: President Jason M. Poirier, Secretary Pamela M. Reed, Karl L. Munder, Lynn P. Galletti, Stephen L. Domotor

FROM: Barney Quinn
Town Engineer

ISSUE: SOUTH MAIN STREET TRAFFIC CIRCLE

PURPOSE:

Town staff is seeking Council approval to award construction of the South Main Traffic Circle located at the intersection of South Main Street, Rising Ridge Road, and South Main Street (extended).

BACKGROUND:

This project will continue/complete addressing the failed intersection of Ridgeside Drive and South Main Street by installing part 2 of the improvements, the South Main Street Roundabout. Chick-fil-A's requirement of installing the South Main Street island with paving and striping improvements was part 1 which was at no cost to the Town.

The 2023 project schedule is of great importance as it will commence with an Award in March, start construction in April, and have a final completion in October.

DISCUSSION:

Bids were solicited during the months of January and February 2023 and the Town received five (5) acceptable bids. Two of the bids were below the engineer's estimate of the project. When bids were read aloud only the total sum of all extended prices, or the "Total Schedule A" values, were provided to the attending bidders and the apparent low bidder was Kibler Construction in the amount of \$1,580,352.02 and the second lowest was Hamilton Site Construction (HSC) in the amount of \$1,608,072.94. It was then mentioned that staff will review all bids for discrepancies and/or exclusions, and staff will have a recommendation prepared for the March Town Council meeting.

After review of the bids staff found discrepancies in how HSC calculated their bid items and determined that HSC's bid is truly the lowest bid in the amount of \$1,559,184.83. Confirmatory discussions were held with HSC and a follow up discussion was held with Kibler. A letter of protest was submitted by Kibler which was thoroughly reviewed and found that all arguments are without merit. Town staff concludes that Hamilton Site Construction's bid is the lowest bid and is in the best interest of the Town (see attached Bid Justification).

The Town currently has \$1.5 million in the FY23 budget which is funded by the American Rescue Plan Act (ARPA). Should HSC's suggested modifications to the material quantities hold true, then an additional 5% contingency should be placed in the FY24 budget to cover the extra potential costs. The total excess funds needed for this project will be budgeted in FY24.

RECOMMENDATION(S):

Town staff recommends the Town Council to approve awarding the South Main Street Traffic Circle project, without delay, to Hamilton Site Construction (HSC) in the amount of \$1,559,184.83. As noted in HSC's anticipated difference in quantities the Town should budget at least a 5% contingency for FY24.

BID JUSTIFICATION:

Bids were solicited during the months of January and February 2023 and the Town received five (5) acceptable bids. Two of the bids were below the engineer's estimate of the project. When bids were read aloud only the total sum of all extended prices, or the "Total Schedule A" values, were provided to the attending bidders and the apparent low bidder was Kibler Construction in the amount of \$1,580,352.02 and the second lowest was Hamilton Site Construction (HSC) in the amount of \$1,608,072.94. It was then mentioned that staff will review all bids for discrepancies and/or exclusions, and staff will have a recommendation prepared for the March Town Council meeting.

The bid review revealed some discrepancies in HSC's bid with a red, clearly-typed note immediately above the Total Schedule A value which reads "*HSC's takeoff does not match the base bid items' quantities". We found 16 items with the red asterisk within their Schedule A, all of which have extended prices that do not match the intended simple multiplication of the engineer's quantity by the unit price. The HSC bidder was contacted to describe how they calculated the noted 16 items. HSC's response was they felt it was helpful to the Town to know that the quantities may differ from the engineer's estimate and their extended prices were calculated utilizing the Contractor's revised quantities multiplied by the unit prices. Modifying the quantities in this "unit price" contract is found to be an irregularity in the bid. However, an irregularity in Mount Airy's contract terms does not necessarily constitute non-acceptance or rejection of the bid.

Naturally this variation, or mistake or irregularity, in HSC's bid does not create an "apples to apples" comparison with the other bids and therefore understandably creates some confusion. In accordance with the Invitation to Bid "The Town of Mount Airy hereby reserves the right, which is understood and agreed to by all Bidders, to reject any and all Bids and to waive any omissions, errors, mistakes, defects or irregularities in any Bid, and to accept the Bid which, in the judgement of the Owner, is to its best interest." This statement as provided in the Bid documents confirms the Town's right to choose the best bid. Again, all five bidders in this case have done work for the Town in recent years and are all deemed well qualified to perform this work. There is no indication or reason to suggest any prejudice against any of the bidders.

Per the Bid Form the "Bidder will complete the Work at the unit prices in schedule A" which means the unit prices hold firm and if the quantities do vary from the engineer's estimated quantities, then the Contractor will be paid per the actual quantities. In order to provide a fair and equal comparison, and without allowing the bidder to change their Bid Form, staff provided an Adjusted Price (based on the engineer's estimated quantities) for the HSC bid by multiplying their unit prices by the engineer's estimated quantities to replace the provided Extended Prices. The total of these Adjusted Prices provides a fair comparison Total Schedule A price of \$1,559,184.83 which is \$21,167.19 below the apparent low bid.

The apparent low bidder, Kibler Construction Company, provided a letter of protest (attached), not dated but received March 1, 2023. Below are a few summarized statements as follows with staff responses to the Town Council:

1. The Town's standard specifications states that MDOT/SHA specifications will apply where the Town's specifications do not contain such information. RESPONSE: The right to waive irregularities are addressed in the Invitation to Bid as noted above which takes precedence over the MDOT/SHA provisions (TC-2.02 and GP-2.15) as is attempted to be argued. The Town's specification does not limit the significance of an irregularity or mistake nor does it limit the Town's interpretation of what defines any omissions, errors, mistakes, defects or irregularities in any Bid.
2. If the Town uses Hamilton's bid quantities rather than Kibler's low bid quantities, then Kibler would have a lower bid. RESPONSE: The quantities provided in the Bid Form are not Kibler's low bid quantities, but they are the engineer's estimated quantities that were shared among ALL bidders. This is the reason that those quantities are the true quantities the bids should be evaluated. Further, staff compared both of the lowest bidders' final estimates based on engineer's estimated quantities and based on HSC's estimated quantities. In both cases HSC is the lowest bid as follows:

a. Kibler's bid based on engineer's quantities	\$1,580,352.02
HSC's bid based on engineer's quantities	<u>1,559,184.83</u>
Low bidder	HSC
Difference	\$21,167.19
b. Kibler's bid based on HSC's quantities	
HSC's bid based on HSC's quantities	\$1,659,078.92
Low bidder	<u>1,608,072.94</u>
Difference	HSC
	\$51,005.98
3. Errors found on protest letter page 2, 1st table: the Town is in agreement that 16 items are in question. However, items 112 and 113 are not lines that have an asterisk. These two items as stated above are only in question by Kibler because they have zero values and therefore should be removed from this table. Items 701 and 804 are missing from this table.
4. Errors found on protest letter page 2, 2nd table: there is no justification for Kibler to reduce their bids for items 112 and 113 as HSC did not reduce the quantities for these two items, rather they provided a "zero" bid for both. Again items 112 and 113 should be removed from this table and items 701 and 804 should be added.
5. First Error found on formulas for comparison on protest letter page 3: the table summarizes the 16 items with modified quantities for both HSC and adjusted numbers for Kibler if it's quantities matched HSC's quantities. It then proceeds to subtract one from the other where this section should be subtracting Kibler's bid at engineer's quantities from Kibler's bid at HSC quantities. That difference should subtract the "Actual Bid Day Total Diff" to reveal the amount Kibler's price is above HSC's price, or \$51,005.98.
6. Second Error found on formulas for comparison on protest letter page 3: The "Actual Bid Day Totals submitted" indicates that Kibler is the low bidder by \$27,720.92, however this is comparing "apples to oranges" quantities. As noted above Kibler's price based on engineer's quantities is above HSC's price by \$21,167.19.
7. In addendum 2, question (P), the pre- and post-construction tunnel inspections will be performed by the Town, though all other CSX requirements shall be the responsibility of the Contractor and shown in line items 112 and 113. RESPONSE: Due to the lack of unit

prices for these items in HSC's bid this same question of whether anything is being excluded was also asked of HSC who indicated that all of those requirements are covered within their bid under separate line items. They did not provide it under items 112 and 113 as the description of those items are specific to the pre- and post-construction tunnel inspection. There is no requirement for a bidder to have a specific range of pricing for any particular line item as long as they confirm that they are not excluding anything from the project bid.

Upon review of all arguments in Kibler's protest it is found that all arguments are without merit. Town staff concludes that Hamilton Site Construction's bid is the lowest bid and is in the best interest of the Town.



KIBLER CONSTRUCTION COMPANY, INC.

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FINKSBURG, MARYLAND 21048

AREA CODE 410
833-5345
FAX
833-1732

EXCAVATING
GENERAL CONSTRUCTION
Town of Mount Airy

110 S Main St

Mount Airy MD 21771

Attn: Town Engineer

Dear Sirs,

We have been informed that there are bid irregularities on the recent bid for Town of Mount Airy South Main Street Roundabout on February 27, 2023.

We offer our response to comments we have received regarding these irregularities. We feel that Hamilton's bid should be found non-responsive and non-responsible for the following reasons.

This bid is based on the Town of Mount Airy, **STANDARD SPECIFICATIONS AND DETAILS FOR CONSTRUCTION** dated January 31, 2019 which states:

10.12 Adoption of State Highway Administration Specifications

The Town of Mount Airy has adopted the State of Maryland, State Highway Administration Book of Standards for Highway & Incidental structures, and **Standard Specifications for Construction and Materials**. All present and future errata and addenda are hereby made a part of these Standard Documents. These Standard Details and Specifications shall apply where the Town of Mount Airy does not contain such information.

Therefore, the town utilizes state highway specifications when the town's specifications do not cover a topic.

Maryland Department of Transportation State Highway Administration STANDARD SPECIFICATIONS for CONSTRUCTION and MATERIALS dated July 2022

Excerpts from the MDOT Standards:

TC-2.02 CONTENTS OF BID FORMS All documents included in or attached to the bid form are necessary parts thereof and **shall not be detached, separated or altered**. The Plans, Specifications, Supplemental Specifications, referred to in the Specifications, and all other Contract Documents will be considered a part of the bid form whether attached thereto or not.

Page 300-7 was altered by Hamilton with a footnote stating "* HSC's takeoff does not match base bid item's quantities." This asterisk was placed on **16 different item quantities on pages 300-3 to 300-6** to indicate a change to the bid form quantity that is somehow produced by dividing the unit price by the

extended price. Hamilton's intent, as indicated verbally by them and in writing on page 300-7, is to provide a bid on a different quantity than what is on the bid form.

Item quantities changed are:

Item	Bid Qty	Hamilton Qty
105	445	500
110	93	109
112	1	0
113	1	0
201	650	433
203	3	39
204	12	277
301	110	64
311	9	11
312	25	30
315	20	40
316	61	143
318	20	40
319	12	153
501	19	174
508	19	174

However, the Town would try to apply the Hamilton Unit prices to Kibler's low bid quantities. While price alterations are not allowed, a better exercise would be to apply Hamilton's adjusted Quantities to Kibler's low bid. The result is that Kibler's bid is still lower than Hamilton's.

HSC changed the following line items:

Item	Correct Bid Qty	Hamilton Bid Qty	Kibler Unit \$	Kibler \$ Ext on HSC Qty	Hamilton Unit \$	HSC Ext \$ on HSC Qty
105	445	500	\$21.96	\$10,980.00	\$77.44	\$38,720.00
110	93	109	\$35.94	\$3,917.46	\$40.41	\$4,404.69
112	1	0	\$1,732.50	\$0.00	\$0.00	\$0.00
113	1	0	\$1,732.50	\$0.00	\$0.00	\$0.00
201	650	433	\$34.94	\$15,129.02	\$5.04	\$2,182.32
203	3	39	\$100.00	\$3,900.00	\$59.09	\$2,304.51
204	12	277	\$80.77	\$22,373.29	\$59.09	\$16,367.93

Item	Correct Bid Qty	Hamilton Bid Qty	Kibler Unit \$	Kibler \$ Ext on HSC Qty	Hamilton Unit \$	HSC Ext \$ on HSC Qty
301	110	64	\$3.26	\$208.64	\$19.40	\$1,241.60
311	9	11	\$300.00	\$3,300.00	\$384.38	\$4,228.18
312	25	30	\$86.94	\$2,608.20	\$57.78	\$1,733.40
315	20	40	\$89.09	\$3,563.60	\$50.24	\$2,009.60
316	61	143	\$90.20	\$12,898.60	\$51.58	\$7,375.94
318	20	40	\$158.87	\$6,354.80	\$50.24	\$2,009.60
319	12	153	\$103.65	\$15,858.45	\$103.17	\$15,785.01
501	19	174	\$39.45	\$6,864.30	\$43.64	\$7,593.36
508	19	174	\$152.25	\$26,491.50	\$20.29	\$3,530.46
Value of Changed Items				\$134,447.86		\$109,486.60

HSC Ext on HSC Qty	\$109,486.60
Less: Kib Ext on HSC Qty	\$134,447.86
Diff Based on HSC Quantities	-\$24,961.26
Actual Bid Day Total Diff	\$27,720.92
Kibler still low bidder by:	\$2,759.66

Actual Bid Day Totals submitted:

Hsc bid	\$1,608,072.94
Kib Bid	\$1,580,352.02
Kib Low by:	\$27,720.92

TC-2.03 PREPARATION OF BID (a) The bidder shall submit their bid utilizing only the electronic forms furnished by the Administration. **The bidder shall specify a price in dollars and cents for each pay item given.**

In addition, addendum 2 states:

(P) Question: Is the town of Mount Airy going to pay the cost to mark out all CSXT existing facilities for this project by CSXT? Otherwise, under what item is going to get paid and what is the cost to consider for estimating purposes for this project?

Response: **Items 112 and 113 have been added for pre- and post-construction tunnel inspections. All related surveying, mark out, and any related work associated with these inspections shall be the**

responsibility of Contractor *and included in these items.*

On page 300-3, Hamilton provided no price for items 112 and 113.

GP-2.15 MINOR IRREGULARITIES OR INFORMALITIES General. Minor irregularities or informalities in bids, as defined below, may be waived if the procurement officer determines that it shall be in the State's best interest. ... A minor irregularity is one which is merely a matter of form and not of substance or pertains to some immaterial or inconsequential defect or variation of a bid or proposal from the exact requirement of the solicitation, **the correction or waiver of which would not be prejudicial to other bidders or offerors. The defect or variation in the bid or proposal is immaterial and inconsequential when its significance as to price, quantity, quality, or delivery is trivial or negligible when contrasted with the total cost or scope of the supplies or services being procured and the intent and meaning of the entire bid or proposal is clear.**

The *Sixteen* changes made by Hamilton in bid item quantities is *not insignificant*. It is *prejudicial* to other bidders.

Further, Hamilton has not acknowledged Addendum #4 on page 300-2. Addendum #4 states in part:

BIDDERS MUST ACKNOWLEDGE RECEIPT OF THIS ADDENDUM BY ATTACHING TO THE INSIDE COVER OF THE SUBMITTED BID PROPOSAL. THE ABSENCE OF THIS ACKNOWLEDGEMENT MAY BE CAUSE FOR REJECTION OF THE BID.

For the reasons above, Hamilton's bid shall be found non-responsive and therefore rejected.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Victor Rodgers', with a long horizontal flourish extending to the right.

Victor Rodgers

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410-833-5345 office